

M/S. PADMA PLOYCHEM PVT. LTD. V. NEW INDIA ASSURANCE COMPANY LIMITED

1. M/S. PADMA PLOYCHEM PVT. LTD.
THROUGH ITS DIRECTOR MR. RAKESH KUMAR, HAVING ITS OFFICE AT
528/1, KARKARI ROAD, VISHWAS NAGAR
DELHI-110032

.....Petitioner(s)

Versus

1. NEW INDIA ASSURANCE COMPANY LIMITED
THROUGH ITS MANAGER, DRO-II, 10TH FLOOR, CORE I, SCOPE MINAR,
LAXMI NAGAR DIRECTOR CENTER
DELHI-110092

.....Respondent(s)

Case No: REVISION PETITION NO. 2014 OF 2019

Date of Judgement: 06 December 2023

Judges:

DR. INDER JIT SINGH
PRESIDING MEMBER

FOR THE PETITIONER : MS. SRISHTI SINGLA, PROXY COUNSEL (WITH
AUTHORIZATION)

FOR THE RESPONDENT : MR. J PN SHAHI, MS. AASTHA KAUSHAL, ADVOCATES

Facts

Complainant company had a money insurance policy with OP insurer. On 11/02/2015, complainant was carrying Rs. 9,65,000 cash and documents in a bag in their car. At a petrol pump, during tire repair, complainant discovered the bag missing from rear seat. CCTV showed two people stealing the bag on a

motorcycle. Complainant filed police FIR and informed insurer through letter on 12/02/2015. Submitted insurance claim form, co-operated with insurer's surveyor investigation. Insurer repudiated the claim on 30/09/2015 citing surveyor's report.

Court's Elaborate Opinions

Scope in revision petition is limited under Sec 21(b) of Consumer Protection Act. Powers can be exercised only if there's prima facie jurisdictional error in impugned order. No jurisdiction to interfere with concurrent findings of fact by lower forums. Found no illegality, irregularity or jurisdictional error in State Commission order.

Arguments by Petitioner/Complainant

Vehicle wasn't unattended as director was present, overseeing tire repair. Doesn't meet criteria of 'unattended vehicle' under Exclusion Clause 6. Burden of proof is on insurer to prove conditions of exclusion clause were met. No evidence to conclusively state vehicle was unattended during theft. Thus exclusion clause 6 not applicable, repudiation of claim unjustified. Cites relevant precedent of NCDRC judgment in a similar controversy.

Arguments by Respondent/Insurer

Lower forums already assessed evidence, not to be re-appreciated. Exclusion Clause 6 and 11 rightly invoked for repudiating claim. Clause 6 – lacked proper care in carrying cash, left unattended in unlocked car. Gross negligence by complainant director. Failed to submit required purchase documents for the cash. No evidence proving deficiency of insurer. Breach of policy terms, hence insurer not liable.

Referred Laws and Sections

Section 21(b) of Consumer Protection Act. Exclusion Clause 6 and 11 of Insurance Policy. Reliance on precedents like Rubi

Chandra Dutta v. United India Insurance.

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Court

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Full Text of Judgment:

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 20.08.2019 of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No.465/2018 in which order dated 17.09.2018, District Consumer Disputes Redressal Forum, East (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 47/2016 was challenged, inter alia praying to allow the present revision petition and set aside the order passed by the State Commission.

2. While the Revision Petitioner (hereinafter also referred to as complainant) was Appellant and the Respondent (hereinafter also referred to as OP) was Respondent in the said FA/465/2018 before the State Commission, the Revision Petitioner was complainant and Respondent was OP before the District Forum in the CC no. 47/2016.

3. Notice was issued to the Respondent. Parties filed Written Arguments/Synopsis on 01.05.2023 (Petitioner/Complainant) and 01.05.2023 (Respondent/OP) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

The complainant company held a money insurance policy with the OP, covering the period from 13.06.2014 to 12.06.2015 for Rs. 10 lakhs. On 11.02.2015, around 6 P.M., while returning from the office to their residence by car, the complainant had Rs.9,65,000/- and some office documents in a bag. At a Petrol Pump in CBD Ground, East Delhi, during a tire pressure check after refueling, the complainant discovered a puncture in the rear wheel. While repairing the tire, the complainant found

their bag missing from the car's rear seat. CCTV footage revealed an individual taking the bag and fleeing on a motorcycle with another person. The complainant filed an FIR under Section 379 IPC at PS Anand Vihar, Delhi, and promptly informed the OP of the theft through a letter dated 12.02.2015. A Money Insurance Claim Form was duly submitted. Despite a thorough police investigation leading to an untraced report from the court on 06.07.2015, the OP appointed surveyor Naresh Jain. The complainant cooperated with the surveyor, providing responses to all inquiries, including those related to CCTV footage and certified statements from M/s Padmini Chemicals and M/s S.N. Impex. However, the OP, through a letter dated 30.09.2015, repudiated the claim on purportedly false and frivolous grounds outlined by the surveyor, significantly delayed by 230 days.

5. Vide Order dated 17.09.2018, in the CC no. 47/2016 the District Forum has dismissed the complaint. Aggrieved by the said Order dated 17.09.2018 of District Forum, Petitioner appealed in State Commission and the State Commission vide order dated 20.08.2019 in FANo.465/2018 has dismissed the appeal and the dismissed the complaint.

6. Petitioner has challenged the said Order dated 20.08.2019 of the State Commission mainly on following grounds:

i. That the Insurance Company must not unreasonably reject a claim due to a minor breach of policy terms. When there's a breach, the claim should be settled on a non-standard basis, not wholly rejected. However, this approach wasn't acknowledged by the State Commission. Additionally, the exclusion clause cited in the insurance policy (Exclusion Clause 6) wasn't applicable in the circumstances of this case. Despite this, the State Commission unjustly dismissed the complainant's claim entirely. As per the established law, when there's a breach of policy terms or warranties, the claim should be settled based on non-standard considerations. The appointed surveyor misinterpreted the case and the State Commission failed to consider the complainant's statement and the FIR, making adverse inferences that led to the denial

of the claim.

ii. The dismissal of the claim on the grounds of the vehicle being unattended and unlocked, as well as the alleged inability to explain cash withdrawals, is contradicted by the observations made by the surveyor. The surveyor conducted a thorough examination and cross-verified the cash book entries with the bank statements, establishing the legitimacy of the cash withdrawals. Furthermore, the surveyor verified the ledger accounts of specific entities, finding that the statements were consistent with the insured accounts. These observations challenge the basis for rejecting the claim and suggest that the actions and explanations provided by the insured were valid and supported by evidence.

iii. The State Commission didn't consider the contradiction between the Surveyor's findings and the reasons given in the Repudiation Letter. The Surveyor clearly stated that the vehicle wasn't unattended, contrary to the reasons cited by the OP for rejecting the claim. The reasons cited by the OP regarding the complainant's inability to clarify cash withdrawals don't align with the surveyor's findings that the cash transactions were legitimate. The State Commission overlooked essential contentions raised by the complainant, such as the purpose of the cash withdrawal and the necessity for maintaining cash balances in business operations. The Surveyor's role was to assess the loss for the OP to quantify. However, the Surveyor, without substantiated grounds, claimed the loss couldn't be established, despite acknowledging the alignment of the complainant's account statements.

iv. The State Commission wrongly dismissed the complainant's appeal without rectifying the non-consideration by the OP of crucial facts. The complainant was not provided with a copy of the terms and conditions before the District Forum's reliance on them, leading to an unfair dismissal. The reliance on Exclusion Clauses 6 & 11 by the State Commission was misplaced and inconsistent with previous legal precedents. The OP's repudiation of the claim was unjustified, constituting a deficiency in service and causing both financial losses and

mental distress to the complainant. The OP's conduct warrants exemplary damages beyond the actual losses suffered by the complainant.

v. The complainant contends that the State Commission failed to acknowledge critical points, such as the contradiction between the repudiation letter and the Surveyor's report, the purpose of cash withdrawals, and the necessity for maintaining cash balances in business. Additionally, there's a dispute regarding the non-disclosure of terms and conditions to the complainant and the incorrect application of exclusion clauses, resulting in an unjustified claim repudiation.

7. Heard learned counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

i. The counsel for Petitioner/complainant argued that the central issue at hand in this Revision Petition is whether the loss incurred by the Complainant falls within the purview of Exclusion No.6 of the Insurance Policy. The State Commission determined that the insurer was not liable for the stolen money due to the exclusion clause related to theft from an unattended vehicle. However, the State Commission's conclusion that the vehicle was unattended is erroneous. The cash was indeed in an unattended briefcase, yet the Director of the Complainant Company was present nearby, overseeing the repair of his car's tire. This does not meet the criterion of the vehicle being unattended as specified in Exclusion Clause 6 of the Insurance Policy. The counsel emphasizes the importance of witnesses' statements present at the scene, particularly those recorded in the Surveyor Report. The Surveyor, in that report, made a crucial observation: "However, from police FIR and insured statement, it could be observed that the vehicle was not unattended."

ii. The counsel further argued that the burden of proof lies with the Insurer to establish that the conditions of the Exclusion Clause were met—specifically, to prove that the vehicle was unattended at the time of the theft. Yet, there is

no substantial evidence to support this claim. As per the Surveyor's Report and other relevant statements, it cannot be conclusively stated that the vehicle was unattended during the theft. Consequently, Exclusion 6 of the Insurance Policy was not applicable in this case, rendering the repudiation of the claim unjustified. The counsel cites a precedent involving a similar controversy, referencing the judgment in 'New India Assurance Co. Ltd. v. M/s Pradeep Kumar Trilokchand, Revision Petition No. 699 of 2019.' In that case, the National Commission ruled in favor of the Consumer/Policy Holder against the Insurance Company, applying a similar legal principle.

iii. The counsel for Respondent/OP argued that the lower forums have already made findings on the matter, and the National Commission isn't supposed to reassess or reappreciate the evidence in revisional jurisdictions. The complainant's company had a money insurance policy, and an incident occurred where a bag containing cash and office documents was stolen from the complainant's car. The complainant reported the incident to the police and the OP, filing a claim for the stolen amount. The counsel contends that the exclusion clauses 6 and 11 of the policy were invoked for repudiating the claim. Exclusion Clause 6 relates to the proper care and attention needed for carrying a substantial amount of cash, emphasizing that the cash was left unattended on the back seat of the car with the doors open. The OP alleges gross negligence on the part of the director of the complainant company, contributing to the repudiation of the claim.

iv. The learned counsel argues that the complainant company does not qualify as a consumer within the meaning of the Consumer Protection Act. The complainant failed to submit required documents related to the purchase of the property; list of office documents which were present in the same bag and the reason for carrying huge cash without proper care. This failure was rightly held by the District Forum. The counsel asserts that there is no concurrent evidence on record proving the deficiency of the OP, as per the findings of the District

Forum. The counsel for respondent/OP concludes that there was a gross breach of terms and conditions of the policy, making the insurance company not liable to indemnify the petitioner.

8. We have carefully gone through the orders of the State Commission, District Forum, Surveyor's report, repudiation letter, other relevant records and rival contentions of the parties. In this case there are concurrent findings of both the fora below against the Petitioner/complainant herein. State Commission has given a well-reasoned order after duly considering the contentions of both side and relying on various judgements of the Hon'ble Supreme Court and NCDRC. Extract of relevant paras of orders of the State Commission is reproduced below:-

"9. Short question for adjudication in this appeal is whether there exists any infirmity in the impugned order dismissing the complaint as no deficiency was found in the subject as against the insurer, warranting interference by this Commission. The District Forum has passed orders relying on Exclusion Clause 6 Clause 11 of the policy. Those exclusion clauses are as under:

Exclusion Clause -6-

'Money carried under contract of affreightment and theft of money from unattended vehicle'

Exclusion Clause-11-

'Loss or damage due to or contributed to by the insured having caused or suffered anything to be done whereby the risks hereby insured against were unnecessarily increased.'

10. Exclusion Clause 6 envisages that cash- huge cash- is supposed to be kept duly attended by somebody. In the subject matter the cash was being carried without observing proper care inasmuch as the cash was lying on the back seat of the car and the door were kept opened. This is clear case where exclusion clause 6 is manifestly applicable.

11. Point that remains unanswered is whether the due and necessary precaution as contemplated under the aforesaid clause 6 was observed. The answer to this would be, as analysed by the District Forum, in negative.

12. It is a trite law that the insurer is liable to indemnify the loss only in the event the insured has been found to be acting in conformity with the terms of the policy. Terms of policy are like any other contract enforceable keeping in the view the terms thereof.

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18. Coming back to the facts of the case it is undisputed fact that the cash was lying on the back seat of the car and the door of the vehicle were opened. This is a clear case of negligence on the part of the appellant. The Hon'ble NCDRC in the matter of G.B.S. Chauhan vs. United India Insurance Co. Ltd., as reported in IV[2017] CPJ 385 (NC) is pleased to hold that if the cash is taken away from the unattended car the insurer is not liable to indemnify the loss, the act being contrary to the terms of the policy.

19. Having regard to the legal position explained 1 am of the considered view that there exists no infirmity in the orders passed by the District Forum assailed before this Commission and accordingly upholding the said order, the appeal is dismissed leaving the parties to bear the cost. Ordered accordingly."

9. District Forum has also given a well-reasoned order, extract of relevant observations of District Forum are reproduced below:-

"To analyse the exclusion clause 6, we have seen that complainant was carrying huge case without proper care in his car and the cash was lying at the back seat and car doors were open. We have also seen the policy issued by OP (EX CW1/3) as Anne. C3 which specify that cash has to be kept during and after business hours and limit was sum insured Rs. 10 lacs.

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Here cash was kept in a bag which was lying on the rear seat of the car and doors were unlocked.

Here money was carried by the complainant from office to residence without proper care and custody.

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Here money collected by the complainant had exceeded 48 hours

and as per his own statement before FIR and surveyor does not correspond with the policy terms. We have also seen the Anne.CW1/5 page 20 where complainant had submitted statement of account up to date 09.02.2015 which showed Rs 10,72,223.56/- and on 11.02.2015 incident of theft occurred in the evening, but there was no statement of account for 10.02.2015 and also no explanation for taking Rs 9,65,000/- and leaving Rs 1,07,223/ in the office.

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Complainant being in PVC trading business and dealing in huge cash transaction, should have been more vigilant for carrying huge cash, but after seeing the facts and evidences of the case there is no concrete evidence on record to prove deficiency of OP or has taken due care for the cash. It is clear that OP work depends upon policy terms and condition and final report from their appointed surveyor. Here these points were found to be as per policy norms. So, neither deficiency of OP seen in their working nor any element of unfair trade practice was proved by the complainant."

10. Extract of relevant para/conclusion of Surveyor's report is reproduced below:-

"7. Loss is though justified from cash balance as per cash book, but due to insured inability to provide appropriate clarification for withdrawing the cash from bank on various dates despite having adequate cash balance in cash book to meet day today expenses creates doubts about the actual cash balance with the insured as on loss date. In such circumstances, I am of the opinion that the loss could not be established and so, the case may be closed as No Claim."

11. As was held by Hon'ble Supreme Court in Rubi Chandra Dutta Vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In

Sunil Kumar Maity Vs. State Bank of India & Ors.

[AIR (2022) SC577] held that "

the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity.

"12. The Hon'ble Supreme Court in Rajiv Shukla vs Gold Rush Sales And Services Ltd.

Civil Appeal No. 5928 of 2022, decided on 8 September, 2022, held that:-

"13. As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. 14. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act.'

13. After careful consideration of all the facts and circumstances of the case, we tend to agree with the findings of District Forum & State Commission. We find no illegality or

material irregularity or jurisdictional error in the orders of the State Commission, hence the same is upheld. Accordingly RP is dismissed.

14. The pending IAs in the case, if any, also stand disposed off.